



**Testimony of Daniel S. Goldberg
Chief Executive Officer
New Skies Satellites B.V.**

**“The ORBIT Act: An Examination of Progress Made
In Privatizing the Satellites Communications Marketplace”**

**Before the House Committee on Energy and Commerce
Subcommittee on Telecommunications and the Internet**

April 14, 2005

**Summary of Key Points in Testimony of Daniel S. Goldberg,
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- The international satellite services market is unrecognizable today from the one Congress confronted when it began considering satellite competition issues in the last 1990s. The ORBIT Act was designed to promote competition by eliminating government ownership and control of operators providing these services. Today, Intelsat, Inmarsat, and New Skies – the three companies that were the focus of the law – are 100% privatized.
- Last year, in order to enhance shareholder value and grow the company, we agreed to be acquired by affiliates of the The Blackstone Group in a private equity transaction. Intelsat and Inmarsat have also used private equity transactions to fully privatize, and other firms like PanAmSat and Eutelsat have done the same.
- The market for satellite services over the last five years has evolved into a hyper-competitive state, with substantial excess capacity, sharply falling prices, industry revenues declining in real terms, and satellite utilization rates at historic lows. Some operators have responded by cutting spending and jobs, and freezing expansion plans. Most industry participants remain financially stable, but natural market forces should be permitted to place our sector on a stronger footing.
- The public interest generally, and U.S. national security interests in particular, favor a strong satellite industry. Commercial satellites are critical infrastructure, heavily used by DoD and other units of the U.S. government, making it important that operators and U.S. manufacturers alike remain commercially and operationally sound.
- Yet in contrast to most other telecom sectors, a full and necessary rationalization of this industry has yet to occur. While ORBIT has opened markets and enhanced competition, excessive investment in capacity by too many players, coupled with competition from undersea fiber, has led most industry observers to suggest consolidation is necessary to redress present threats and to enable operators to offer a broader array of services.
- In addition to the challenges posed by the general business environment, the ORBIT Act requirements have regulatory burdens and uncertainties specifically for New Skies, our employees, and shareholders.
- Having achieved all that ORBIT intended to achieve, Congress should now reexamine the satellite landscape and update the statute in light of the tremendous changes that have taken place since ORBIT's passage. Through the FCC's public interest test, application of the antitrust laws, and mechanisms applicable to transactions that implicate national security, Congress has enacted many alternative safeguards to ensure that a competitive satellite services market remains. The special restrictions of ORBIT on New Skies are no longer justified and should be repealed.

Mr. Chairman and Members of the Subcommittee:

My name is Dan Goldberg, and I am the Chief Executive Officer of New Skies Satellites B.V. New Skies is a global satellite communications company that provides satellite-based transponder capacity for the transmission of data, video, voice, and Internet-related services. We own and operate a network of five in-orbit satellites positioned in fixed orbital locations above the earth, including two that we have designed, constructed, launched, and placed in operation since our creation in 1998. We have one additional satellite currently under construction by Boeing Satellite Systems.

I appreciate the opportunity to appear before the Subcommittee today to review the impact that the ORBIT Act has had on our company and on the international satellite services sector more broadly since its enactment in March 2000. The central message I have for you is that the international satellite services market is unrecognizable today from the one Congress confronted when it began considering satellite competition issues in the late 1990s. The ORBIT Act was designed to promote competition in this market by eliminating government ownership and control of operators providing international satellite services. Today, Intelsat, Inmarsat, and New Skies – the three companies that were the focus of the law – are 100 percent controlled by private commercial interests. Indeed, the market today is not only competitive, it is hypercompetitive to the point where the sector, on balance, is unhealthy. That situation has adverse implications for U.S. national security interests as well as for the public more broadly.

Although ORBIT was a tremendous success in achieving its twin goals of promoting privatization and competition, it is now important that Congress reexamine the law in light of the enormous changes in the industry and competitive environment that

have occurred since it was enacted. For this reason, we urge the introduction and passage of legislation to update ORBIT to address the current realities.

New Skies' Creation and Roots

Let me begin by briefly tracing the history of New Skies' efforts to establish itself in the satellite marketplace, and to compete with satellite operators many times our size. New Skies was created on April 23, 1998 as a privatized commercial spin-off from INTELSAT, which at that time was still an intergovernmental organization. INTELSAT formed the new company under the laws of The Netherlands, and transferred to it certain assets and liabilities, including several satellites and related contracts. The members of INTELSAT – primarily governments, their telecommunications ministries, or their national satellite or telecommunications providers – were given ownership stakes in New Skies approximately equal to their respective ownership stakes in INTELSAT.

What INTELSAT did not transfer, however, were any employees or terrestrial infrastructure required to control and manage the payloads of the satellites. In that sense, New Skies was literally created from scratch. A new management team was brought in, composed almost entirely of Americans with experience in the satellite or telecommunications fields. I myself started as New Skies' first general counsel. All of us were required to move our families to The Netherlands, where INTELSAT had formed the company.

We opened a headquarters office in The Hague, and have since established a sales and marketing office in Washington, D.C. and a teleport facility near Manassas, Virginia, as well as offices and other ground-based facilities in nine other locations around the

globe. Although we are Dutch as a matter of corporate law, all of our senior officers are Americans, all of our satellites have been built by American manufacturers, our largest customers are American and, as I'll say more about later, we are at this time 100 percent owned by affiliates of the U.S. private equity firm The Blackstone Group.

The ORBIT Act and Privatization

From the creation of the fixed satellite services (or FSS) industry in the 1960s until the late 1980s, INTELSAT – which was then an intergovernmental treaty-based organization – held a near monopoly over international satellite communications. Since the late 1980s, however, the FSS industry has evolved into a highly competitive, global industry. Due in large part to pressure from the Congress and other governments, as well as from newer commercial entrants seeking to promote competition in the international satellite services market, INTELSAT began a privatization process in the late 1990s.

The 1998 creation of New Skies described above was only the first step in that process. Although from our inception New Skies has operated as a fully privatized, independent commercial entity, Congress believed more needed to be done to ensure not only nominal privatization of the industry but also a competitive marketplace for international satellite services. Accordingly, in March 2000, Congress enacted the Open-Market Reorganization for the Betterment of International Telecommunications Act, or the ORBIT Act. The Act leveraged access to the most important telecommunications market in the world – the United States – as an incentive for INTELSAT and Inmarsat, another intergovernmental treaty-based organization, to achieve full and pro-competitive privatizations.

Although New Skies at that point had already operated for two years as an independent private entity, ORBIT also imposed a series of requirements and restrictions on us. These were intended to ensure, on one hand, that INTELSAT, the intergovernmental organization that created us and had not yet privatized, would not have undue influence over our operations; and on the other hand, that New Skies would not be accorded preferential treatment or benefits from its INTELSAT heritage. (A summary of these statutory provisions is appended to my testimony.)

Among the most significant of ORBIT's provisions was a requirement that INTELSAT, Inmarsat, and New Skies each conduct an initial public offering of shares by various dates specified in the statute in order to substantially dilute the aggregate ownership of our stock by signatories or former signatories of INTELSAT. New Skies' deadline for conducting its IPO under the original statute was July 31, 2001, and we beat that deadline by more than nine months. From October 2000 until November 2004, we were a publicly held company whose shares traded on the New York Stock Exchange (via American Depositary Shares) and on the Euronext Amsterdam exchange.

To this very day, in fact, New Skies remains the *only* company covered by ORBIT that actually did all that Congress originally required of it, and within the time frame initially established by the law. We sought a single statutorily permitted extension from the Federal Communications Commission when, in the spring of 2000, the Internet bubble burst and sent market conditions spiraling downward the day before we were to launch our IPO. Even though our balance sheet and cash flow were strong and, therefore, we did not need to conduct an IPO to raise capital, we never came back to Congress seeking any further statutory extensions. Indeed, we proceeded with the required IPO in

the fall of 2000, even in the midst of a bear market. That is how importantly we viewed the need to demonstrate compliance with the wishes of Congress. Having completed our IPO, we then sought from the FCC full and unrestricted access to the U.S. market, which we were granted in 2001.

Last year, in order to enhance shareholder value and help grow and develop our company through the financial backing and strong commercial focus of a private equity firm, New Skies agreed to be acquired by affiliates of The Blackstone Group, a transaction that was overwhelmingly approved by our shareholders in July 2004 and concluded in November 2004. As discussed below, private equity firms now also own most of our competitors. We are now in the process of planning for a new IPO, which, if successful, will result in a substantial percentage of our shares being traded on the New York Stock Exchange.

In the meantime, both INTELSAT and Inmarsat have also fully privatized through sales of their respective companies to private equity investors. Those transactions were facilitated by an amendment to ORBIT approved last fall, which in turn followed several amendments during the last four years in which Congress repeatedly extended the statutory deadlines for conducting IPOs. Through last year's amendment, Congress essentially acknowledged that IPOs were not the only way in which private ownership and substantial dilution of signatory influence could be accomplished.

The Satellite Sector, Then and Now

There can be no doubt that ORBIT successfully accomplished the goals that Congress set more than five years ago. It is no exaggeration, Mr. Chairman, to say that

the international satellite services market today is virtually unrecognizable when compared to what Congress confronted in the mid- to late 1990s when it last debated the future of the industry.

The three international satellite operators that were the focus of ORBIT – INTELSAT, Inmarsat and New Skies – are now purely commercial concerns controlled by private equity investors. As such INTELSAT and Inmarsat are now fully privatized and no longer enjoy any of the privileges and immunities once accorded to them by virtue of their former status as intergovernmental organizations. Nor are the companies covered by ORBIT the only satellite operators to be acquired by private equity investors. In addition to New Skies, Intelsat and Inmarsat, both PanAmSat and Eutelsat are now controlled by private equity consortia.

Independent firms that once complained the deck was stacked against them by U.S. law and treaty obligations now compete aggressively in a market untainted by IGOs that once enjoyed special legal and diplomatic protections. New Skies is one of four global FSS satellite operators – the others are the privatized Intelsat, SES Global, and PanAmSat – and we compete with them as well as with numerous other regional and national satellite operators like Eutelsat and SatMex, and with suppliers of certain ground-based communications services. Inmarsat, although a global satellite operator, participates in the mobile satellite services sector, which is a different market than the FSS sector.

Unlike the global satellite operators, a number of regional operators today are owned in whole or in part by governmental entities. Some of these operators benefit from preferential treatment in their home markets, treatment that distorts competition in

those markets. ORBIT, however, does not apply to these regional operators and, therefore, the markets in which they operate must be opened through bilateral or multilateral trade efforts.

Privatization and private equity participation in the international satellite services market are not the only ways in which our industry has changed radically. In five short years, the FSS industry has evolved into what is widely regarded an intensely competitive – I would argue, in fact, hypercompetitive – industry. The numbers tell the story dramatically.

From 1998, when the House of Representatives first passed its version of what eventually became the ORBIT Act, to the end of 2004, the amount of satellite supply has swelled by nearly 60 percent, growing from 5,285 transponders in orbit to 8,299. And this number is expected to increase still further by the end of 2006. In fact this dramatic increase substantially understates the *actual* expansion of supply, as digital compression and other improvements in transmission technology have resulted in at least a doubling of effective transponder capacity, and this is likely a conservative estimate.

In addition to this enormous expansion in satellite supply, the FCC estimates in its 2004 International Circuit Status Report that there was more than 40 times as much submarine fiber capacity available in 2003 than in 1998. This fiber capacity is competitive with international satellite capacity for a variety of applications. Indeed the FCC estimates in this same report that whereas satellites carried 10 percent of international traffic in 1997, that amount was cut to just 1 percent in 2003.

This significant expansion of satellite capacity and competitive undersea fiber has left the industry struggling with substantial excess supply, falling prices, and satellite

utilization rates at historic lows. Our experience is a good proxy for what's taking place in the international satellite services market more broadly. Our average annual rate for a transponder sold in 2000, the year ORBIT was enacted, was \$1.9 million; in 2004, the rate was \$1.2 million, a nearly 40 percent decrease. Notwithstanding the fact that the industry has substantially increased capacity since the time ORBIT was passed – investing billions of dollars to do so – industry revenues have actually *declined* in this period, from \$6.8 billion in 2000 to an estimated \$6.75 billion in 2004. And where the industry-wide satellite utilization rate was 82 percent at the time of ORBIT's passage, it is now closer to 65 percent, leaving close to 3,000 transponders in orbit empty. This is slightly more than half of the total satellite capacity that existed when this Committee first considered legislating in this area. Many operators have responded to these serious problems by reducing spending, including cutting jobs, and virtually freezing all expansion satellite plans.

Although lower prices and vigorous competition are important public policy objectives, the excessive investment in satellite and undersea fiber capacity has resulted in an international satellite services market that today is unhealthy. This unhealthy condition represents a meaningful risk to U.S. national security interests and the public interest more broadly. Commercial satellites have been identified as critical infrastructure by Congress in section 201 of the Homeland Security Act of 2002, as well as by the Government Accountability Office and the President's National Security Telecommunications Advisory Committee. They are of enormous strategic importance to the U.S. Government and particularly to the Defense Department, which increasingly relies on commercial space operators for vital services. Indeed the U.S. Government is

the largest single user of New Skies' satellite fleet and we are proud of the role our company plays in supporting the U.S. Government's activities around the world. In light of the critical role the commercial satellite services industry plays, it is of vital importance that the industry players are commercially and operationally sound.

In addition to the critical infrastructure commercial satellite operators provide to government users, these operators are important customers of the U.S. companies that produce satellites and launch vehicles, including Lockheed Martin, Boeing, and Space Systems/Loral. The decision by international satellite services providers to curtail their investment and expansion plans in the face of the downturn in the market has severely impacted U.S. satellite manufacturers and launch service providers. When this happens, the full burden of ensuring that these important industries have sufficient business activities falls on the government sector – and the U.S. taxpayer – alone.

The present unhealthy condition of the international satellite services market is not necessarily a cause for great alarm. Most of the participants in this market remain financially stable and their satellite fleets are operationally robust, albeit underutilized. While the international satellite services market today is near the bottom of a natural boom and bust cycle that is common in many industrial sectors, including the broader telecommunications sector, natural market forces, over time, should put the sector on a sounder footing just as it does in other sectors.

Yet in contrast to almost every other sector of the telecommunications industry, a full and necessary rationalization of the international satellite services market has yet to occur. In spite of all the overcapacity, we still have roughly the same number of active satellite operators today – 39 – as the 42 we had in 1999. Approximately a dozen

additional companies are in various stages of plans to launch still more FSS satellites. In other words, today we have about the same number of operators or more battling for the same pool of revenues we had five years ago, but with substantially more satellite capacity and abundant undersea fiber that can be used for certain of the same services. Although some consolidation has taken place over the years, most industry executives and observers anticipate more will occur to order to redress the present threats to the industry and position the operators to offer a broader array of secure and reliable services to commercial and governmental users.

In sum, while the privatization policy of ORBIT has helped to open markets and, in this regard, enhanced competition in the international satellite services marketplace, excessive investment in satellite and undersea fiber capacity now threaten this strategic industry's health.

New Skies Under the ORBIT Act

In addition to the challenges posed during the last five years by the general business environment, meeting the ORBIT Act's requirements also came with considerable economic and regulatory burdens for New Skies, our employees, and the new shareholders that Congress in effect created by mandating that we conduct an IPO. Our underwriters in the 2000 IPO, for example, were able to market our shares only at the lowest end of the estimated offering price range. With market conditions in the telecommunications sector remaining weak through the early part of this decade, our share price for some periods fell to below half of what it sold for in our 2000 IPO.

Later, when we announced a plan to buy back 10 percent of our shares in an effort to increase value for our shareholders, a competitor pointed to ORBIT as the basis for seeking an emergency FCC inquiry into whether we were undoing the shareholder dilution that our IPO had achieved. Although the FCC ultimately rejected that claim – in fact, the buyback achieved even greater dilution – we were forced to spend valuable time and resources over a period of several months defending our business strategy, which in any other publicly traded company is a commonly used and well-accepted practice.

ORBIT over time has created operational uncertainties for us as well. Arm's length transactions with Intelsat that are otherwise reasonable and customary in the industry, such as the joint use of certain satellites in exchange for an equitable revenue share, must be put through an additional level of rigorous legal review that no other company must undertake. That is because ORBIT limits certain business dealings between the two companies, but is unclear as to how far those limits extend. In addition, ORBIT's prohibition on New Skies and Intelsat combining, while perhaps justifiable at the time of ORBIT's passage, now represents an unnecessary obstacle to the needed rationalization of the sector.

ORBIT Must Be Updated to Keep Pace with the New Satellite Marketplace

Having achieved everything that ORBIT was designed to achieve, Congress should now reexamine the satellite landscape and consider whether the statute requires updating in light of the tremendous changes that have taken place since ORBIT's passage. In the fully competitive satellite world we have today, which in large part is a result of ORBIT's policies, there is no longer any economic or other policy justification

for keeping New Skies bound by rules and regulations of a kind that apply to no other competitive company of which we are aware.

All of the other global satellite operators, as well as Eutelsat, are substantially larger than we are in terms of both the number of satellites they have in orbit as well as in terms of their revenues. Due to their larger sizes, these operators are able to take advantage of greater economies of scale, enabling them to provide heightened levels of network redundancy and to devote more resources – both human and financial – to sales, operations, product development, and strategic alliances and acquisitions.

In order to enhance our own competitive position and the quality and breadth of services we offer our customers, one of our objectives is to pursue an acquisition, joint venture, strategic combination, or other strategic transaction with another satellite operator as and when suitable opportunities arise. Under appropriate circumstances, we also would consider acquiring rights to use additional orbital locations or frequencies, additional in-orbit satellites, or other facilities and components necessary for the provision of bundled services. Intelsat is one of a number of entities with whom it would be logical for New Skies to consider such arrangements. However, in light of the restrictions in ORBIT, including those that explicitly apply to any dealings we may have with Intelsat, New Skies faces uncertainty with respect to its ability to enter into such arrangements, thereby limiting our opportunities, placing us at an unfair competitive disadvantage, and imperiling what may be an otherwise sensible way to achieve the rationalization the sector sorely needs at this time.

We believe that Congress can justifiably claim credit for the remarkable changes in the satellite industry over the last half-dozen years, which were in part the result of

ORBIT's privatization and competition policies. We also believe, respectfully, that it is now time for Congress to allow every competitor in the satellite industry to operate on a level playing field. Failing to update the statute to make it more consistent with present-day realities in the satellite marketplace will impede the operation of the natural market forces necessary to strengthen the industry for the benefit of customers (including government users), suppliers (including U.S. manufacturers of satellites and rockets), employees and shareholders.

It is probable that the industry will consolidate; we have seen some signs of that already. If there is in fact further consolidation, the process should be market-driven, without the need for the kind of special restrictions that are found in ORBIT. And now that the market has become fully privatized and fully competitive, there is no risk that any contemplated transaction might escape the same thorough regulatory review to which every other company is subject. Through the FCC's public interest test, the application of the antitrust laws, and mechanisms that ensure the highest level of scrutiny for any transaction that implicates national security, to name a few, Congress has enacted many alternate safeguards to ensure that ORBIT's overriding objective – a competitive international satellite services market – is preserved. We urge you to pass legislation updating ORBIT Act to address these current realities.

Thank you for your consideration, and I will be pleased to answer any questions you may have.

SUMMARY OF ORBIT ACT PROVISIONS
APPLICABLE TO NEW SKIES SATELLITES N.V.

Provisions Specifically Applicable to New Skies Under Section 623:

- Public offering conducted no later than July 31, 2001
- No interlocking officers, directors, or employees with INTELSAT
- No spectrum assigned to INTELSAT as of date of enactment to be transferred to New Skies
- Any merger, ownership or management ties, or exclusive arrangements between INTELSAT and New Skies prohibited until 11 years after completion of INTELSAT's privatization

Criteria Applicable to New Skies as well as INTELSAT, Inmarsat, and Future Successor Entities Under Section 621:

- Each shall operate as an independent commercial entity with a pro-competitive ownership structure
- IPO shall substantially dilute aggregate ownership of each entity by signatories or former signatories
- No IGO to have ownership interest in INTELSAT, its successor entities, or New Skies
- No IGO to have more than minimal ownership in Inmarsat or its successor entities
- No IGO privileges and immunities or preferential access to orbital locations
- Each entity to be a national corporation or similar accepted commercial structure, subject to the laws of the nation in which incorporated
- Shares of successor entities and New Skies to be listed for trading on one or more major exchanges with transparent and effective securities regulation
- Majority of directors of successor entities and New Skies not to be directors, employees, officers, or managers, or otherwise serve as representatives of any signatory or former signatory
- No director of successor entities and New Skies to be a director, employee, officer or manager of any IGO remaining after privatization
- Board of directors of successor entities and New Skies to have a fiduciary obligation
- No officers or managers of successor entities and New Skies to be officers or managers of any signatories or former signatories, or to have any direct financial interest in or financial relationship to any signatories or former signatories
- No directors, officers, or managers of successor entities and New Skies who hold such positions in any IGO
- Any transactions or other relationships between or among any of these entities to be conducted on an arm's length basis.
- Successor entities and New Skies subject to the jurisdiction of a nation or nations that have effective telecom competition laws and regulations, are signatories to the WTO Basic Telecom Agreement, and have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets.